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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,932	04/13/2004	Keiko Ishibashi	2004-111	4453
27569	7590	08/16/2007	EXAMINER	
PAUL AND PAUL 2000 MARKET STREET SUITE 2900 PHILADELPHIA, PA 19103			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	
			NOTIFICATION DATE	DELIVERY MODE
			08/16/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@PAULANDPAUL.COM  
claire@paulandpaul.com  
fpanna@paulandpaul.com

## Office Action Summary

Application No.

10/822,932

Applicant(s)

ISHIBASHI ET AL.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 1761

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamoto ('042) in view of Takami et al ('462), further in view of Kozai et al(JP 2001-17099), Kishida et al (JP 9-163943), Numata et al (JP2000-166491), Takami et al (JP 9-322725), applicants admission of the prior art and Nakamura et al (6045847), further in view of Monte (3,914,524), Gebert et al (6,063,402), and Morningstar (3,294,523).

In regard to claim 7, Iwamoto discloses cooked rice containing water soluble soybean polysaccharides, beta or gluco amylase, and trehalose. These ingredients are added to rice to provide the rice with greater low temperature tolerance, which is applicants objective as well. Claim 7 differs from Iwamoto in the use of erythritol. As noted previously the art taken as a whole discloses that both trehalose and erythritol are sugar alcohols. Iwamoto discloses that greater low temperature tolerance is achieved because the soybean polysaccharide absorbs more water and the trehalose fixes the absorbed water. It is noted that this is applicants disclosed respective reasons for employing the soybean polysaccharide and the erythritol as well. As has been also noted previously, the art taken as a whole, including applicants admission of the prior art, discloses that it was conventionally known that sugar alcohols could function as an ingredient to increase cold temperature tolerance of cooked rice. The record also shows that it was well known that moisture retention was a known, inherent property of sugar

Art Unit: 1761

alcohols. Erythritol is, of course, a well known sugar alcohol. To modify Iwamoto and substitute one conventional sugar alcohol for another conventional sugar alcohol, for its art recognized and applicants intended function of immobilizing water, which the art recognizes improves the cold temperature tolerance of cooked rice, would therefore have been an obvious result effective variable/optimization, routinely determinable. As for the "wherein" statement, a "wherein" statement should be the result of statements recited higher up in the claim. No amounts of the ingredients have been recited. Also, it is not clear what is the scope of the term "resists" (retrogradation). Finally, how long the product would "resist" retrogradation would have been an obvious optimization in view of the Iwamata disclosing two of the specific components and a different species of the third component, but being used for the same function. The secondary art, as noted previously, either confirms applicants admission of the prior art, that the recited components, at least generically, are known ingredients in increasing cold temperature tolerance of cooked rice, or confirms the water capturing properties of compounds such as sugar alcohols. Claim 8 does not appear to add any additional limitation to claim 7, and thus should be canceled, since it is an improper dependent claim. In regard to claim 8, which functionally recites a variation in property of the cooked rice, as noted above, the cold temperature tolerance properties of cooked rice is seen to have been a matter of routine optimization of the art recognized ingredients and their role in the cold temperature tolerance of cooked rice.

All of applicants remarks filed 5/21/07 have been fully and carefully considered but are either moot in view of the dropping of several rejections or are not seen to be

Art Unit: 1761

convincing. As noted above, Iwamoto specifically discloses two of the components and in the case of the third component (erythritol) discloses a different sugar alcohol species from that of the recited sugar alcohol species. However, as also noted above, Iwamoto's disclosed species (as well as applicants disclosed species) is being employed for its well known property of immobilizing water which plays a role in preserving the cooked rice. One of ordinary skill in the art would be fairly lead through routine experimentation to select the particular sugar alcohol, or, for that matter, any of the other well known ingredients involved with the preserving of cooked rice, to attempt to optimize the results. It is also urged that the quality of the evidence in the specification is irrelevant to the issue of obviousness. This urging is also not convincing. Contrary to what has been asserted, a prima facie case of obviousness has been shown. To attempt to overcome a prima facie case of obviousness, one can submit secondary considerations such as an unexpected result. In fact, applicants whole argument in support of patentability is based on a purported preservation time of 4 days rather than a purported preservation time of less than 4 days for the prior art. Thus, the quality of the evidence provided is of the utmost significance in the overall question of patentability, and the comparative data in the specification is not sufficient to overcome the prima facie case of obviousness for the reasons given in the last Office action. Note, too, that even if the evidence of a better result is convincingly made, the result could still be an expected result as opposed to an unexpected result, depending, on various factors such as if one species component was known to have a greater degree of a particular property than the other species component.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
8/10/07